

November 17, 2005

### **Summary of Draft Patriot Reauthorization Act Conference Report (revised)**

- The draft conference report (“conference report”) makes virtually all of the expiring provisions of the USA PATRIOT Act (Patriot Act) permanent without including necessary changes to restore checks and balances.
- Personal records from libraries, bookstores, doctor’s offices, business, and other entities that are not connected to an international terrorist or spy could still be obtained using either a secret order under the Foreign Intelligence Surveillance Act (FISA) or a “national security letter” (NSL) that can be issued by an FBI official without any court oversight.
- Both secret FISA orders and NSLs would continue to contain a potentially permanent gag provision that bars a recipient from telling anyone (other than the recipient’s lawyer) that records have been obtained. The court must accept as “conclusive” the government’s assertion that disclosure of an NSL would harm national security.
- The bill allows sneak-and-peek searches under a broad standard not limited to terrorism cases. New 30 and 90 day time limits could be waived or renewed indefinitely, allowing such searches to continue to remain secret for weeks, months or even years.
- The bill still allows secret eavesdropping and secret search orders that do not name a target or a location, with only after-the-fact oversight by a court as to why the government believed a unknown target was in that location.
- Reforms the Patriot Act’s definition of “domestic terrorism” to provide that assets may not be forfeited except where the organization or individual is involved in a serious federal crime – a welcome change.
- Omits modest limits on a host of additional Patriot Act surveillance powers, all of which are made permanent.
- Although the final reauthorization bill includes the most extreme death penalty provisions sought by some, it would create a number of new crimes, including new death penalties, without adequate consideration by Congress.
- The bill allows the Justice Department, not federal courts, to determine that a state has a competent death penalty system, qualifying it for a relaxed set of procedural rules for federal habeas proceedings.
- Provides a new, seven year sunset on only three provisions out of scores of new surveillance powers obtained by the government in the Patriot Act. The bill provides an excessively long, seven-year sunset on only three specific provisions, despite broad bipartisan support in the House and Senate for a shorter, four-year sunset period.